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No. 82-608

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

CROWN CENTER REDEVELOPMENT CORPORATION and HALLMARK CARDS, INCORPORATED,
Petitioners,

v.

SHIRLEY STOVER, *et al.*,
Respondents.

On Conditional Cross-Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

REPLY MEMORANDUM FOR PETITIONERS

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TABLE OF AUTHORITIES

Page

CASES:

Green v. Occidental Petroleum Corp., 541 F.2d 1335 (9th Cir. 1976) 3

In re Northern District of California, Dalkon Shield IUD Products Liability Litigation, Nos. 81-4648 through 81-4656 (9th Cir. June 18, 1982, as amended, July 15, 1982) 3

McDonnell Douglas Corp. v. United States District Court, 523 F.2d 1083 (9th Cir. 1975), *cert. denied*, 425 U.S. 911 (1976) 3

Mills v. Electric Auto-Lite Co., 396 U.S. 275 (1970) 2

NLRB v. International Van Lines, 409 U.S. 48 (1972) ... 2

United States v. United Mine Workers, 330 U.S. 258 (1947) 1

STATUTES AND RULES:

28 U.S.C. § 1254(1) 1
Fed. R. App. P. 21(b) 2
Fed. R. Civ. P. 23(b)(1) 2,3
Fed. R. Civ. P. 23(b)(1)(A) 2,3
Fed. R. Civ. P. 23(b)(1)(B) 2
Supreme Court Rule 19.6 2

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REPLY MEMORANDUM FOR PETITIONERS[1]

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1. Respondents attempt to avoid the substantive issues presented in the conditional cross-petition by claiming that petitioners lack standing. Br. in Opp. 4 & n.2. However, the standing arguments advanced by respondents are without merit.

First, respondents assert that petitioners lack standing because a "successful party has no standing to seek review of a judgment entirely in his favor." Br. in Opp. 4. Even if this proposition were valid as a general matter,[2] it has no appli-

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[1] Information required by Rule 28.1 of this Court is set forth in footnote 1 of the conditional cross-petition filed on October 6, 1982.

[2] The controlling statutory provision, 28 U.S.C. § 1254(1), permits "any party" to petition for a writ of certiorari to review cases in the courts of appeals, and the Court has granted petitions filed by prevailing parties. *See, e.g., United States v. United Mine Workers*, 330 U.S. 258 (1947).

cation to the conditional cross-petition filed in this case because cross-petitioners are seeking broader relief than that afforded by the narrow ruling of the Eighth Circuit. Under the Eighth Circuit's limited Anti-Injunction Act holding, a new mandatory class action that excluded plaintiffs who have cases pending in state court could be certified. Indeed, as noted in the conditional cross-petition, respondents already have requested that the district court certify such a modified Rule 23(b)(1) class action. Pet. 10 n.7. Since the rulings sought through the cross-petition would afford petitioners additional relief by precluding any Rule 23(b)(1) class action, petitioners not only have standing to present those issues to this Court but have followed proper procedure in raising the class certification issues through the submission of a conditional cross-petition. *See, e.g., NLRB v. International Van Lines*, 409 U.S. 48, 52 n.4 (1972); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 381 n.4 (1970).

Second, respondents claim that there is "a question" whether Crown Center and Hallmark have standing because the Eighth Circuit referred to these cross-petitioners as *amici curiae*. Br. in Opp. 4 n.2. That question is clearly answered by the Federal Rules of Appellate Procedure and the Rules of this Court, which establish that Crown Center and Hallmark were parties below and thus have standing to participate as parties in this Court.[3]

2. Respondents' defense of the district court's certification of a Rule 23(b)(1) class action merely underscores the propriety of granting the conditional cross-petition if the Court grants review in No. 82-217.[4] Respondents do not deny that the district court's class action decision squarely conflicts with

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[3] Fed. R. App. P. 21(b) provides that when a petition for mandamus is filed, as was done in this case, "[a]ll parties below other than the petitioner shall also be deemed respondents for all purposes." Rule 19.6 of this Court states that "[a]ll parties to the proceeding in the court whose judgment is sought to be reviewed shall be deemed parties in this Court." Crown Center and Hallmark, who participated actively as respondents in the Eighth Circuit, thus are parties in this Court.

[4] Respondents fail to cite a single case supporting the district court's certification of a Rule 23(b)(1)(B) class action. Br. in Opp. 5. Moreover, one of the few cases offered in support of the district court's Rule 23(b)(1)(A)

(footnote continues)

decisions of the Ninth Circuit. *See, e.g., Green v. Occidental Petroleum Corp.*, 541 F.2d 1335 (9th Cir. 1976); *McDonnell Douglas Corp. v. United States District Court*, 523 F.2d 1083, 1086 (9th Cir. 1975), *cert. denied*, 425 U.S. 911 (1976); *cf. In re Northern District of California, Dalkon Shield IUD Products Liability Litigation*, Nos. 81-4648 through 81-4656 (9th Cir. June 18, 1982, as amended, July 15, 1982). Indeed, in the *McDonnell Douglas* case the Ninth Circuit held that a similar Rule 23(b)(1) class certification not only constituted an abuse of discretion but also warranted the issuance of a writ of mandamus to set aside the certification. *See McDonnell Douglas Corp. v. United States District Court, supra*, 523 F.2d at 1087.[5]

3. Sound judicial administration requires that the Court grant the conditional cross-petition if it decides to review the Eighth Circuit's decision. As petitioners have explained, respondents' arguments in support of review in No. 82-217 are predicated in large part on the propriety of the district court's certification of a mandatory class action in this case. Pet. 9. This Court should have the benefit of briefing and argument on that question in the event it undertakes review of the decision below. In addition to assisting the Court in its analysis of the issues presented in No. 82-217, review of the class certification issue would clarify the procedural posture of this case and would conserve judicial resources by avoiding further piecemeal adjudication.

(footnote continued)

ruling has been expressly rejected by the Ninth Circuit. *See McDonnell Douglas Corp. v. United States District Court*, 523 F.2d 1083, 1085 (9th Cir. 1975), *cert. denied*, 425 U.S. 911 (1976) (disapproving the *Hernandez* case relied upon by respondents). Neither of the other two cases cited by respondents contains any reasoning supporting the district court's certification of a Rule 23(b)(1)(A) class action in this case.

[5] Respondents assert that the "Eighth Circuit clearly felt that the District Court's certification was proper." Br. in Opp. 4. This assertion, if correct, would further reinforce the need for this Court to review the issues raised in the conditional cross-petition, since there would be at least an implicit conflict between the Eighth and Ninth Circuits. Petitioners, however, believe there is no basis for respondents' assertion since, as respondents acknowledge, the Eighth Circuit majority never addressed the class certification issue.

CONCLUSION

The petition in No. 82-217 should be denied. If review is granted in No. 82-217, this conditional cross-petition should be granted.

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